REMARKS

Applicant addresses each of the points raised by the Examiner in the Detailed Action.

Election/Restriction

1. Applicant notes the Examiner has properly acknowledged Applicant's election without traverse of Species I, set forth in Claims 1-6 and 9. Applicant further notes the Examiner has properly acknowledged Applicant's withdrawal of Claims 7 and 8 as non-elected claims.

Claim Objection

2. The Examiner has objected to Claim 1 because it contains an informality, namely the word "In" in the beginning of the claim. In response Applicant amends Claim 1 to delete the word "In" and to add the word "and" at the end of the preamble. Claim 1, as amended, remains in the case.

Claim Rejections – 35 USC § 102

3. Applicant notes the appropriate paragraph of 35 U.S.C. § 102 has been correctly quoted.

4. Applicant notes that the Examiner has rejected Claims 1 and 3 under 35 U.S.C. § 102(e) as being anticipated by *Unsworth* (Pub. US 2004/238477). In response to the Examiner's rejection, Applicant provides herewith a sworn affidavit which sets forth a date of invention earlier than May 28, 2003. May 28, 2003, is disclosed as the filing date of the Unsworth application and is thus the constructive date of that invention. *See Mahurkar v. C.R. Bard, Inc.*,

79 F.3d 1572, 1577 (Fed. Cir. 1996) (plaintiff's invention date is the filing date of his patent if he has not come forward with an earlier date of invention). Applicant has provided a sworn affidavit that the present invention was invented prior to the constructive date of invention of the Unsworth invention. Thus, Applicant has priority of invention over Unsworth. *See Price v. Symsek*, 988 F.2d 1187, 1190 (Fed. Cir. 1993) (priority of invention goes to the first party to reduce an invention to practice unless the other party can show that it was the first to conceive the invention and that it exercised reasonable diligence in later reducing that invention to practice.) (Note that Applicant may properly "swear behind" *Unsworth* because that application is no longer pending, having been abandoned on January 3, 2005 for failure to respond to an office action mailed on June 2, 2004. *Cf.*, 37 C.F.R. § 1.131. The information concerning *Unsworth* was obtained from the United States Patent and Trademark Office's Public Patent Application Information Retrieval system (PAIR)).

The Unsworth application is not an "application for patent ... by another filed in the United States *before* the invention of the applicant", 35 U.S.C. § 102(e)(1) (emphasis added) because the Unsworth application was filed *after* the invention of the Applicant. Thus, 35 U.S.C. § 102(e)(1) cannot form a basis for the rejection of Claims 1 and 3.

Applicant respectfully requests that the rejection of Claims 1 and 3 be removed and that said claims be allowed.

Claim Rejections – 35 USC § 103

5. Applicant notes the appropriate paragraph of 35 U.S.C. § 103 has been correctly quoted.

6. Applicant notes that the Examiner has rejected Claim 2 under 35 U.S.C. § 103(a) as being unpatentable over *Unsworth* in view of *Han* (U.S. No. 5,372,268). For the same reasons stated in response to the Examiner's rejection based on 35 U.S.C. § 102(e)(1), *Unsworth* is not a proper reference as prior art. Therefore, the rejection of Claim 2 based on *Unsworth* in view of *Han* is improper under 35 U.S.C. § 103(a), since such a rejection must be based on prior art.

Applicant respectfully requests that the rejection of Claim 2 be removed and that said claim be allowed.

7. Applicant notes that the Examiner has rejected Claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Unsworth*. For the same reasons stated in response to the Examiner's rejection based on 35 U.S.C. § 102(e)(1), *Unsworth* is not a proper reference as prior art. Therefore, the rejection of Claim 4 based on *Unsworth* is improper under 35 U.S.C. § 103(a), since such a rejection must be based on prior art.

Applicant respectfully requests that the rejection of Claim 4 be removed and that said claim be allowed.

8. Applicant notes that the Examiner has rejected Claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over *Unsworth* in view of *Ramsey* (Des. 362,185) and *Arthur* (Des. 200,884). For the same reasons stated in response to the Examiner's rejection based on 35 U.S.C. § 102(e)(1), *Unsworth* is not a proper reference as prior art. Therefore, the rejection of Claims 5 and 6 based on *Unsworth* in view of *Ramsey* and *Arthur* is improper under 35 U.S.C. § 103(a), since such a rejection must be based on prior art.

Applicant respectfully requests that the rejection of Claims 5 and 6 be removed and that said claims be allowed.

9. Applicant notes that the Examiner has rejected Claim 9 under 35 U.S.C. § 103(a) as being unpatentable over *Unsworth* in view of *Baltzley* (U.S. No. 1,744,026). For the same reasons stated in response to the Examiner's rejection based on 35 U.S.C. § 102(e)(1), *Unsworth* is not a proper reference as prior art. Therefore, the rejection of Claim 9 based on *Unsworth* in view of *Baltzley* is improper under 35 U.S.C. § 103(a), since such a rejection must be based on prior art.

Applicant respectfully requests that the rejection of Claim 9 be removed and that said claim be allowed.

10. Applicant notes the Examiner's contact information.

Conclusion

Applicant respectfully suggests that the amendment to the Claims set forth herein place the claimed invention in order for allowance. Allowance of the present application therefore is in order, and is requested.

Dated this 31st day of January, 2005, in Bangor, Maine.

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